Reports of Cases

OPINION OF ADVOCATE GENERAL
WATHELET
delivered on 11 July 2013 [1]

Case C-391/12

RLvS Verlagsgesellschaft mbH
v
Stuttgarter Wochenblatt GmbH

(Reference for a preliminary ruling from the Bundesgerichtshof (Germany))

(Consumer protection — Unfair commercial practices — Misleading omissions in advertorials — Member State's legislation prohibiting any publication for remuneration not identified with the word 'advertisement' ('Anzeige'))

I – Introduction

1. By its reference for a preliminary ruling, the Bundesgerichtshof (Federal Court of Justice) (Germany) questions the Court about the interpretation of Article 7 of Directive 2005/29/EC [2] and point 11 of Annex I to that directive.

2. That request was submitted to the Court on 22 August 2012 in proceedings between Stuttgarter Wochenblatt GmbH ('Stuttgarter Wochenblatt') and RLvS Verlagsgesellschaft mbH ('RLvS') concerning the possibility of prohibiting the latter, on the basis of Paragraph 10 of the Law governing the Press of the *Land* of Baden-Württemberg (Landespressegesetz Baden-Württemberg) ('the *Land* Press Law') from inserting or causing to be inserted, for remuneration, in a newspaper, publications not identified by the use of the word 'advertisement' ('Anzeige').

3. By that question, the Court is being asked about the extent of the harmonisation brought about by Directive 2005/29 in relation to unfair practices and about the scope the Member States have for being more restrictive than European Union law in seeking to ensure a higher level of consumer protection or to pursue another objective in the public interest, such as the protection of a fundamental right. In this case, it is a matter, according to the German Government, of protecting the freedom and pluralism of the media (which are enshrined in Article 12(2) of the Charter of Fundamental Rights of the European Union)

1 — Original language: French.

2 — Directive of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).

II – Legal context

A – *European Union law*

4. Under Article 2(d) of Directive 2005/29, 'business-to-consumer commercial practices' means 'any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers'.

5. Pursuant to Article 3(1) of Directive 2005/29, that directive 'shall apply to unfair business-to-consumer commercial practices, as laid down in Article 5, before, during and after a commercial transaction in relation to a product'. However, as provided in Article 3(5) of that directive, '[f]or a period of six years from 12 June 2007, Member States shall be able to continue to apply national provisions within the field approximated by this Directive which are more restrictive or prescriptive than this Directive and which implement directives containing minimum harmonisation clauses. These measures must be essential to ensure that consumers are adequately protected against unfair commercial practices and must be proportionate to the attainment of this objective. The review referred to in Article 18 may, if considered appropriate, include a proposal to prolong this derogation for a further limited period.'

6. Article 3(8) of Directive 2005/29 provides for another derogation in that it states that the directive is 'without prejudice to any conditions of establishment or of authorisation regimes, or to the deontological codes of conduct or other specific rules governing regulated professions in order to uphold high standards of integrity on the part of the professional, which Member States may, in conformity with Community law, impose on professionals'.

7. Article 4 of Directive 2005/29 provides that 'Member States shall neither restrict the freedom to provide services nor restrict the free movement of goods for reasons falling within the field approximated by this Directive'.

8. Article 5 of Directive 2005/29, entitled 'Prohibition of unfair commercial practices', provides:

'1. Unfair commercial practices shall be prohibited.

2. A commercial practice shall be unfair if:

(a) it is contrary to the requirements of professional diligence,

and

(b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.

…

5. Annex I contains the list of those commercial practices which shall in all circumstances be regarded as unfair. The same single list shall apply in all Member States and may only be modified by revision of this Directive.'

9. Article 7 of Directive 2005/29, entitled ‘Misleading omissions’, provides:

‘1. A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

2. It shall also be regarded as a misleading omission when, taking account of the matters described in paragraph 1, a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in that paragraph or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

…’

10. Point 11 of Annex I to Directive 2005/29, entitled ‘Commercial practices which are in all circumstances considered unfair’, states that ‘Misleading commercial practices’ include ‘[u]sing editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial). This is without prejudice to Council Directive 89/552/EEC.’ [3]

B – *German law*

11. Paragraph 10 of the *Land* Press Law of 14 January 1964 provides:

‘Identification of publications for remuneration

Any publisher of a periodical or manager responsible (within the meaning of the fourth sentence of Paragraph 8(2)) who has received or requested or been promised remuneration for a publication shall identify that publication clearly with the word “advertisement”, unless it is already apparent from its arrangement and layout that it is an advertisement.’

12. Paragraph 3 of the Federal Law on Unfair Competition (Gesetz gegen den unlauteren Wettbewerb) provides:

‘Paragraph 3:

Prohibition of unfair commercial practices

(1) Unfair commercial practices shall be unlawful if they are likely to have a perceptible adverse effect on the interests of competitors, consumers or other market participants.

(2) Commercial practices in relation to consumers shall in any case be unlawful if they are not in keeping with the due care to be expected of the trader and are likely to have a perceptible adverse effect on the consumer’s ability to take an informed decision and thereby to cause him to take a transactional decision which he would not otherwise have taken. In that connection regard must be had to the average consumer or, if the commercial practice is directed at a particular group of consumers, an average member of that group. …

3 — Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23).

(3) The commercial practices directed at consumers which are listed in the annex to the present law shall always be regarded as unlawful.'

Pursuant to Paragraph 4(3) and (11) of the Federal Law on unfair competition, '[u]nfairness shall have occurred in particular where a person … conceals the advertising nature of commercial practices [or] … infringes a statutory provision that is also intended to regulate market behaviour in the interest of market participants.'

13. Point 11 of the Annex to the Federal Law on unfair competition states that 'use, financed by a trader, of editorial content in order to promote a product, without the link being clear from the content or visual or auditorial presentation (advertorial) thereof' is to be deemed to be unlawful for the purposes of Paragraph 3(3) of that law.

III – Facts and the question referred for a preliminary ruling

14. Stuttgarter Wochenblatt publishes a weekly newspaper of the same name, while RLvS, established in Stuttgart, publishes the 'GOOD NEWS' advertiser. In the June 2009 edition of the latter, RLvS published two articles for which it had received remuneration from sponsors.

15. The first of those two articles, a three-quarter page item printed in the 'GOOD NEWS Prominent' section, carries the heading 'VfB VIP-Geflüster' (VfB VIP Gossip). Accompanied by photos, the article is a report on prominent guests who attended the final game of the season played by the German Bundesliga team, VfB Stuttgart. Between the headline, which also contains a short introduction, and the body of the article, which comprises 19 photographs, there is an indication that the article was financed by third parties. That indication takes the form of a graphically highlighted representation of the company name 'Scharr' preceded by the words 'sponsored by'. Under that article at the bottom of the page there is a quarter-page advertisement, separated from the article by a dividing line and identified by the word 'advertisement' ('Anzeige'), which contains a report on the start of the renovation work on the Mercedes-Benz Arena and an advertisement for the product 'Scharr Bio Heizöl' (Scharr Bio Heating Oil), which is sold by the sponsor of the editorial article.

16. The other article, printed on another page of the advertiser, in the 'GOOD NEWS Wunderschön' section, forms part of a series entitled 'Wohin Stuttgarter Verreisen' (Where the people of Stuttgart like to go) and carries the sub-heading: 'Heute: Leipzig' (Today: Leipzig). This is an article covering seven-eighths of a page and consisting of an editorial snapshot of the city of Leipzig. The headline is also accompanied by the wording 'sponsored by', followed by the name of the undertaking which financed it, Germanwings, in graphically highlighted form. There is also an advertisement for Germanwings printed in the bottom right-hand corner of the page, which is again identified by the word 'advertisement' and separated from the editorial feature by a dividing line. The advertisement features a competition in which participants can win two flights to Leipzig, among other prizes, if they give the correct answer to a question relating to the frequency of flights between Stuttgart and Leipzig.

17. Stuttgarter Wochenblatt submits that, since the two publications in question were sponsored financially, they are publications for remuneration within the meaning of Paragraph 10 of the *Land* Press Law and that, consequently, they infringe that paragraph as they are not clearly identified as being advertisements.

18. In the action at first instance brought before it by Stuttgarter Wochenblatt, the Landgericht Stuttgart (Regional Court, Stuttgart) upheld the action and ordered RLvS not to publish or cause to be published for remuneration in the *GOOD NEWS* advertiser any publication not identified by the term 'advertisement', in the manner of the two articles in question in the June 2009 issue and the nature of which as advertisements is not generally apparent from their arrangement and layout. RLvS appealed against that judgment but was unsuccessful.

19. In its appeal on a point of law ('Revision') before the referring court, RLvS maintains its form of order seeking dismissal of the application, arguing that Paragraph 10 of the *Land* Press Law infringes European Union law and is therefore not applicable.

20. The Bundesgerichtshof is uncertain as to whether the full and complete application of Paragraph 10 of the *Land* Press Law, in the context of Paragraph 4(11) of the Federal Law on unfair competition, complies with EU law, in particular in the light of the complete harmonisation by Directive 2005/29 of the rules concerning unfair business-to-consumer commercial practices.

21. Given that, in the main proceedings, both the first instance and appeal courts granted Stuttgarter Wochenblatt's application on the basis of Paragraphs 4(11) of the Federal Law on unfair competition and Paragraph 10 of the *Land* Press Law, the Bundesgerichtshof wishes to leave open the question whether the publications at issue may also infringe Paragraph 3(3) of the Federal Law on unfair competition, read in conjunction with point 11 of the Annex relating to that paragraph, and Paragraph 4(3) of that law, provisions which correspond in essence to Article 5(5) of Directive 2005/29, read in conjunction with point 11 of Annex I thereto, and Article 7(2) of that directive.

22. The Bundesgerichtshof details the two objectives pursued by Paragraph 10 of the *Land* Press Law, which regulates the market behaviour of market participants for the purposes of Paragraph 4(11) of the Federal Law on unfair competition and which is reproduced in virtually identical form in almost all the press and media laws of the German *Länder*. On the one hand, it seeks to prevent newspaper readers from being misled as a result of the fact that consumers are often less critically disposed towards advertising which is disguised as editorial content than towards commercial advertising which is recognisable as such. On the other hand, the requirement that advertising be separated from editorial content is intended to maintain the objectivity and neutrality of the press, by countering the risk of undue external influence being exerted on the press, including in non-business contexts. That separation requirement laid down in the press and media legislation performs an essential function in safeguarding the objectivity and neutrality of the press and the broadcasting media, something which could not be achieved by a prohibition on editorial advertising laid down in unfair trading legislation alone.

23. In those circumstances, the Bundesgerichtshof decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Do Article 7(2) and point 11 of Annex I, in conjunction with Articles 4 and 3(5), of [Directive 2005/29] preclude the application of a national provision (in this case, Paragraph 10 of [the *Land* Press Law] which is intended not only to protect consumers against misleading practices but also to protect the independence of the press and which, in contrast to Article 7(2) and point 11 of Annex I to the directive, prohibits any publication for remuneration, irrespective of the purpose thereby pursued, if that publication is not identified by the use of the term "advertisement", unless it is already evident from the arrangement and layout of the publication that it is an advertisement?'

IV – Procedure before the Court

24. The request for a preliminary ruling was received by the Court on 22 August 2012. Written observations were lodged by the applicant in the main proceedings, the German, Czech and Polish Governments and the Commission. A hearing took place on 12 June 2013, which was attended by the representatives of the applicant and the defendant in the main proceedings, the German Government and the Commission.

V – Assessment

A – *Scope of Directive 2005/29*

25. In order to answer the question referred, it must first of all be established whether the practices covered by the legislation at issue in the main proceedings, which consist in producing publications for remuneration, constitute commercial practices within the meaning of Article 2(d) of Directive 2005/29 and are therefore subject to the rules laid down by that directive.

26. Article 2(d) of the directive defines 'business-to-consumer commercial practices' as being 'any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers'.

27. Paragraph 10 of the *Land* Press Law, however, contains no reference to any economic or commercial behaviour, whether on the part of the publisher or on the part of the reader. Paragraph 10 of that law applies to any communication, whether commercial in nature or not.

28. That being said, according to settled case-law, Directive 2005/29 is characterised by a particularly wide scope *ratione materiae*.[4] In accordance with the wording of recital 6 and in keeping with the spirit of recital 8 in the preamble to the directive, 'only national legislation relating to unfair commercial practices which harm "only" [, that is to say, exclusively,[5]] competitors' economic interests or which relate to a transaction between traders is thus excluded from that scope'.[6]

29. In other words, in order for the disputed national provision to come within the scope of Directive 2005/29, it must be intended to protect consumers.[7] According to the referring court, 'Paragraph 10 of the *Land* Press Law, which is reproduced in virtually identical form in almost all the press and media laws of the German *Länder*, serves to regulate market behaviour within the meaning of Paragraph 4(11) of the Federal Law on unfair competition. It pursues two equal-ranking objectives: on the one hand, it is intended to prevent readers from being misled as a result of the fact that consumers are often less critically disposed towards advertising which is disguised as editorial content than towards commercial advertising which is recognisable as such … On the other hand, the requirement that advertising be separated from editorial content is intended to maintain the objectivity and neutrality of the press'.[8]

30. According to the referring court, Paragraph 10 of the *Land* Press Law therefore has the twofold objective of maintaining the objectivity and neutrality of the press and of protecting consumers.[9]

31. For its part, the German Government disputes that Paragraph 10, and more generally the whole of the *Land* Press Law, regulates consumer protection. According to the language used by the German Government in its written observations, and repeated at the hearing on 12 June 2013, although Paragraph 10 of the *Land* Press Law is ultimately intended to protect consumers, it is only through a 'reflex effect' which requires editorial content to be separated from advertising content.

4 — See, to that effect, Case C-304/08 *Plus Warenhandelsgesellschaft* [2010] ECR I-217, paragraph 39, and Case C-540/08 *Mediaprint Zeitungs- und Zeitschriftenverlag* [2010] ECR I-10909, paragraph 21.

5 — See, to that effect, Opinion of Advocate General Trstenjak in *Mediaprint Zeitungs-und Zeitschriftenverlag*, point 47.

6 — *Plus Warenhandelsgesellschaft*, paragraph 39, and judgment in *Mediaprint Zeitungs- und Zeitschriftenverlag*, paragraph 21.

7 — See, to that effect, Opinion of Advocate General Trstenjak in *Mediaprint Zeitungs- und Zeitschriftenverlag*, point 42.

8 — Point 10 of the order for reference.

9 — Ibid., point 14.

32. It must nevertheless be remembered that that it is not for the Court of Justice to interpret national law. The Court must reason on the basis of the factual and legislative context, as described by the referring court, in which the question put to it is set.[10] As regards Directive 2005/29 itself, the Court has moreover expressly pointed out that it is for the national court and not for the Court of Justice 'to establish whether the national provision at issue in the main proceedings actually pursues objectives relating to consumer protection in order to determine whether that provision comes within the scope of the Unfair Commercial Practices Directive'.[11]

33. Consequently, in so far as, according to the Bundesgerichtshof, the provision at issue in the main proceedings is intended, at least in part, to protect consumers, I am of the view that it comes within the scope of Directive 2005/29.

34. However, as I have already pointed out, Paragraph 10 of the *Land* Press Law contains no reference to any economic behaviour, whether on the part of the publishing party or on the part of the reader. As it applies to any communication, whether commercial in nature or not, I take the view that a distinction is called for.

35. Unlike Article 7(2) of Directive 2005/29, the *Land* Press Law does not presuppose that the publication is made with commercial intent, or that it is likely to cause the consumer to take a transactional decision within the meaning of that article of the directive. Similarly, the publication does not necessarily have to promote a product, in contrast to what is required in point 11 of Annex I, read in conjunction with Article 5(5) of that directive.

36. In that regard, I share the Commission's view when it observes that, pursuant to Article 3(1), Directive 2005/29 applies only to unfair business-to-consumer commercial practices, as laid down in Article 5. That means that the commercial practice will be unfair only when it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed.

37. In so far as Paragraph 10 of the *Land* Press Law does not presuppose that the publication is made with a commercial intent, or that it is likely to cause the consumer to take a transactional decision within the meaning of Article 5 of the directive, it applies to facts which do not automatically come within the scope *ratione materiae* of the directive. That is the case, for example, with publications paid for by political parties, general interest associations and other, similar organisations which have no commercial objective. Directive 2005/29 does not apply to those situations and the national legislature therefore retains its freedom of action in regard to them.

B – *Extent of the harmonisation brought about by Directive 2005/29*

38. As the referring court pertinently notes, Directive 2005/29 brought about a full harmonisation of the rules relating to commercial practices. Pursuant to Article 4 of the directive, Member States may not adopt stricter rules than those provided for in the directive, even if their objective is to achieve a higher level of consumer protection.[12]

39. With regard to the practices at issue in the documents submitted to the Court, the European Union legislature took the view that an advertorial was not covered by the definition of an unfair practice within the meaning of Directive 2005/29 if the fact that that type of publication was paid for privately was made clear in its content or by images or sounds clearly identifiable by the

10 — See, inter alia, to that effect, Case C-347/06 *ASM Brescia* [2008] ECR I-5641, paragraph 28.

11 — Order in Case C-288/10 *Wamo* [2011] ECR I-5835, paragraph 28.

12 — See, to that effect, Joined Cases C-261/07 and C-299/07 *VTB-VAB and Galatea* [2009] ECR I-2949, paragraph 52; *Plus Warenhandelsgesellschaft*, paragraph 41; and judgment in *Mediaprint Zeitungs- und Zeitschriftenverlag*, paragraph 30.

consumer.[13] Paragraph 10 of the *Land* Press Law, however, requires any publisher of a periodical who has received or requested (or been promised) remuneration for a publication to identify that publication clearly with the word 'advertisement' (unless it is already generally evident from the arrangement and layout of the publication in question that it is an advertisement).

40. It is apparent from that comparison that, where the European Union legislature does not require any specific wording, the German *Land* provision in principle requires the specific use of the word 'advertisement'. The fact that it is possible to dispense with it in certain circumstances – that is to say, when it is generally apparent from the arrangement and layout of the publication that it is an advertisement – does not in any way alter the fact that that provision regulates the publisher's activity more restrictively, and therefore more strictly, than Directive 2005/29. According to point 11 of Annex I to the directive, an advertorial constitutes an unfair commercial practice only where the trader who has paid for the publication has not indicated this in the content or by images or sounds clearly identifiable by the consumer. That limitation seems to me to cover the same situation as that referred to by Paragraph 10 of the German *Land* Press Law.

41. Nor does the fact that the measure at issue is also based on the concern to maintain the objectivity and neutrality of the press seem to me to be capable of altering the reasoning and its conclusion.

42. Admittedly, the Court has recognised that press diversity may constitute an overriding requirement under Article 36 TFEU, capable of justifying a restriction on free movement of goods.[14] However, it has also held that, '[e]ven if the national provision at issue in the main proceedings does essentially pursue the maintenance of pluralism of the press …, it is important to note that the possibility of Member States maintaining or establishing in their territory measures which have as their aim or effect the classification of commercial practices as unfair on grounds relating to maintenance of the pluralism of the press does not appear amongst the derogations from the scope of [Directive 2005/29] set out in recitals 6 and 9 and in Article 3 thereof'.[15]

43. It seems to me that that conclusion is all the more cogent since, by laying down a compulsory form of wording which is not included in point 11 of Annex I to Directive 2005/29, the national legislature is in effect modifying the list of practices which are in all circumstances considered unfair, something which it is prohibited from doing. Under Article 5(5) of that directive, the list of commercial practices contained in Annex I may only be modified by revision of the directive itself. In other words, that same directive expressly prohibits Member States from making unilateral additions to the list in Annex I to the directive.[16]

44. Directive 2005/29 must therefore be interpreted as precluding national legislation, such as that at issue in the main proceedings, in so far as it applies to publications which constitute unfair commercial practices within the meaning of Article 5 of Directive 2005/29.

C – *Effect of Article 3(5) of Directive 2005/29*

45. In its question, the referring court also mentions Article 3(5) of Directive 2005/29, under which '[f]or a period of six years from 12 June 2007, Member States shall be able to continue to apply national provisions within the field approximated by this Directive which are more restrictive or prescriptive than this Directive and which implement directives containing minimum harmonisation clauses. These measures must be essential to ensure that consumers are adequately protected against unfair commercial practices and must be proportionate to the attainment of this objective. …'

13 — Point 11 of Annex I to Directive 2005/29.

14 — See, to that effect, Case C-368/95 *Familiapress* [1997] ECR I-3689, paragraph 18.

15 — Judgment in *Mediaprint Zeitungs- und Zeitschriftenverlag*, paragraph 26.

16 — See, to that effect, Opinion of Advocate General Trstenjak in *Mediaprint Zeitungs- und Zeitschriftenverlag*, point 115.

46. Would that article not apply, at the very least, until 12 June 2013, to Paragraph 10 of the *Land* Press Law? I do not think so.

47. As Advocate General Trstenjak pointed out in *Mediaprint Zeitungs- und Zeitschriftenverlag*, Article 3(5) of Directive 2005/29 confines that exception to national provisions which 'implement directives containing minimum harmonisation clauses'. [17]

48. In that regard, all the parties confirmed at the hearing that the *Land* Press Law at issue was not intended to transpose any directive, which excludes the application of Article 3(5).

49. For my part, I would add that Paragraph 10 of the *Land* Press Law, while not intended to transpose one of the provisions of Directive 2005/29, nevertheless concerns a field – advertorials – which is governed by point 11 of Annex I to that directive. That field therefore seems to me to be subject to the full harmonisation brought about by the directive and thus excluded, also on that basis, from the scope of Article 3(5) of that directive.

D – *Effect of Article 3(8) of Directive 2005/29*

50. In its observations, the Polish Government raises the possibility of regarding the provisions of the *Land* Press Law as rules which Member States may, pursuant to Article 3(8) of Directive 2005/29, impose on professionals in order to uphold high standards of integrity on their part.

51. When questioned on this point at the hearing by the Judge-Rapporteur, the parties present were all of the view that Article 3(8) of Directive 2005/29 did not apply to journalists. I am also of the view that the contested provision cannot be regarded as a specific provision governing a regulated profession within the meaning of Article 2(l) of the directive.

VI – Conclusion

52. In the light of all the foregoing considerations, I propose that the Court should answer as follows the question referred for a preliminary ruling by the Bundesgerichtshof:

Directive 2005/29/EC must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which, in so far as it applies to publications which constitute unfair commercial practices within the meaning of Article 5 of Directive 2005/29, requires any publisher of a periodical who has received or requested or been promised remuneration for a commercial publication to identify that publication clearly with the word 'advertisement' in so far as it is not already generally evident from its arrangement and layout that it is an advertisement, and which is intended not only to protect consumers, but also pursues other objectives.

17 — See, to that effect, and for examples of directives which contain a minimum harmonisation clause for the purposes of Article 3(5) of Directive 2005/29, Opinion of Advocate General Trstenjak in *Mediaprint Zeitungs- und Zeitschriftenverlag*, point 64 and footnote 44.